



AF
CZ

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:

WARREN E. LANGDON

Group Art Unit: 2155

Examiner: David R. Lazaro

Serial No.: 09/672,398

Filed: September 28, 2000

For: PORTABLE WIRELESS PLAYER AND ASSOCIATED
METHOD

Attorney Docket No.: 1724 / USW 0605 PUS

REPLY BRIEF

Mail Stop Appeal Brief-Patents
Commissioner for Patents
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a reply brief in response to the Examiner's answer mailed September 17, 2004.

Exemplary claim 1 specifically recites "downloading music to the portable wireless music player from the music service provider in accordance only with the previously defined play list such that the portable wireless music player is only a relatively simple listening device with limited functionality so as not to be time critical in its operations" in

CERTIFICATE OF MAILING UNDER 37 C.F.R. § 1.8

I hereby certify that this paper, including all enclosures referred to herein, is being deposited with the United States Postal Service as first-class mail, postage pre-paid, in an envelope addressed to: Mail Stop Appeal Brief - Patents, Commissioner for Patents, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313-1450 on:

11/17/04

Date of Deposit

Jeremy J. Curcuri
Name of Person Signing

Jeremy J. Curcuri
Signature


combination with other limitations. Applicant maintains that Eyal fails to anticipate the claimed invention. In Eyal, the network-enabled devices are generally used for streaming media search and playback – as opposed to only for use with a previously defined play list. There is no suggestion to modify the devices in Eyal, which are exemplified as a PC, PDA, cell phone, or Palm PC. In this way, it cannot be logically concluded from Eyal that there is a suggestion for a music player that is only a relatively simple listening device with limited functionality so as not to be time critical in its operations and that the downloading of music is in accordance only with the previously defined play list.

There is no suggestion in Eyal of the particular combination including the limited functionality as specifically recited in claim 1. The Examiner makes extensive statements with regard to the minimum scope for a device of Eyal, but fails to particularly point out a way that Eyal anticipates the claimed invention. In the last paragraph of the Examiner's answer, the Examiner notes that the Samsung Internet Player article was presented to establish that at the time of the invention of Eyal, a relatively simple, portable wireless music player with limited functionality so as not to be time critical existed in some form. The Examiner further states that the existence of this device makes it logically reasonable to interpret Eyal as including such a device or teaching a similar device.

Even if the article is considered as presenting a relatively simple, portable wireless music player with limited functionality, the mere existence of such a device does not make it logically reasonable to interpret Eyal as including such a device or teaching a similar device or to even conclude that such a device would be useable in Eyal. The Examiner has not made a rejection based on a combination of references, but has chosen to pursue an anticipation rejection. Applicants maintain that Eyal fails to anticipate all of the claimed aspects of the invention. The fact that the article may suggest a simple device fails to suggest that it is reasonable to interpret Eyal as anticipating the claimed invention. In contrast, Eyal does not anticipate the claimed invention, and does not suggest the claimed combination involving a limited functionality device.

Even so, there is no motivation to modify Eyal to achieve the claimed invention even if multiple references were considered.

Respectfully submitted,
WARREN E. LANGDON

By 
Jeremy J. Curturi
Reg. No. 42,454
Attorney for Applicant

Date: 11/2/04

BROOKS KUSHMAN P.C.
1000 Town Center, 22nd Floor
Southfield, MI 48075-1238
Phone: 248-358-4400
Fax: 248-358-3351